Supreme Court, U.S.
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No. 98-1498

IN THE

Supreme Court of the United States

NAUMAN S. SCOTT, U.S. DISTRICT JUDGE,

Petitioner,

v.

MICHAEL P. TONE, ANNE FIEDLER, ROBERT B. BIECK, JR., JAMES W. BERRY, WILLIAM E. WRIGHT, JUDY L. BURNTHORN, W. GLENN BURNS and AMERICAN CASUALTY CO. OF READING, PENNSYLVANIA,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT WILLIAM E. WRIGHT, JR.

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STATEMENT OF THE CASE

Judge Scott's petition is one of five petitions seeking this Court's review of the Fifth Circuit's judgment reversing in part and affirming in part the judgment of the district court imposing, in the exercise of its inherent sanctions power, various sanctions on an insurance company and seven attorneys. The Fifth Circuit reversed and vacated the sanctions imposed on each of sanctions defendants American Casualty Company of Reading, Pennsylvania ("CNA"), Michael P. Tone ("Tone"), Anne Fiedler, and Judy L. Burnthorn, and then altogether dismissed the sanctions proceeding as to them. The Fifth Circuit also reversed and vacated the sanctions imposed on each of sanctions defendants William E. Wright, Jr. ("Wright"), Robert B. Bieck, Jr. ("Bieck"), and W. Glenn Burns ("Burns"), and then remanded, as to them only, to the district court, with instructions. Finally, the Fifth Circuit affirmed the sanctions imposed on sanctions defendant James W. Berry ("Berry").[1] United States District Judge Nauman S. Scott, the very district court judge who imposed sanctions on, among others, respondent Wright, has taken the unusual step of filing a petition with this Court seeking outright reversal of the Fifth Circuit's judgment and reinstatement of his judgment. Alternatively, Judge Scott asks this Court to remand the matter to him "for further proceedings consistent with its guidelines." Petition at 29.

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1. The other petitions filed in this matter include: (a) petition on behalf of respondent Wright, No. 98-1465; (b) petition on behalf of Berry, No. 98-1468; (c) petition on behalf of Bieck, No. 98-1469; and (d) petition on behalf of Burns, No. 98-1470.

REASON FOR DENYING THE WRIT

I.

JUDGE SCOTT LACKS AUTHORITY TO SEEK, ON HIS OWN BEHALF, A PETITION TO REVIEW THE JUDGMENT OF THE FIFTH CIRCUIT COURT OF APPEALS

At the district court level, Judge Scott presided over the sanctions proceeding against various sanctions defendants, including Wright. Each of the sanctions defendants, including Wright, sought review of Judge Scott's judgment in the Fifth Circuit. Because Judge Scott was not a party, but nevertheless wished to present argument in opposition to the appeals filed from his judgment, he filed a motion for leave to file a brief with the Fifth Circuit. In his April 18, 1997 motion, Judge Scott requested "leave to file a brief to reply to the briefs filed by the sanction defendants." By order dated June 11, 1997, the Fifth Circuit granted Judge Scott's motion and granted him leave to file a brief in response to the appellants' briefs, without prejudice to later reconsideration. Judge Scott did not file a motion to intervene in the Fifth Circuit or in this Court.

In his petition, Judge Scott purports to invoke this Court's jurisdiction under 28 U.S.C. § 1254(1), which provides that

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> > (1) By writ of certiorari granted upon the petition of any *party* to any civil or criminal case, before or after rendition of judgment or decree; . . .

28 U.S.C. § 1254(1) (emphasis added).

This statutory provision makes clear that only a *party* to a civil or criminal case may seek a petition for writ of certiorari. Judge Scott was not a party in the district court, and he was also not a party in the Fifth Circuit.

In *Karcher v. May*, 484 U.S. 72, 108 S. Ct. 388 (1987), this Court reaffirmed that

> [o]ne who is not an original party to a lawsuit may of course become a party by intervention, substitution, or third-party practice. But we have consistently applied the general rule that one who is not a party or has not been treated as a party to a judgment has no right to appeal therefrom.

Karcher, 484 U.S. at 77, 108 S. Ct. at 392 (numerous citations omitted).

Judge Scott was not a party to the sanctions proceedings that give rise to the appeal sought to be reviewed herein — Judge Scott was the judge in those sanctions proceedings.

Further and in any event, the sanctions proceedings at issue herein were brought in the district court ostensibly to vindicate the judicial power of the United States. In a case such as this one, in which the United States is interested, it is the exclusive province of the Solicitor General to appear in this Court to represent the United States:

> Except when the Attorney General in a particular case directs otherwise, the Attorney General and the Solicitor General shall conduct and argue

> suits and appeals in the Supreme Court . . . in which the United States is interested.

28 U.S.C. § 518(a).[2]

In *United States v. Providence Journal Company*, 485 U.S. 693, 108 S. Ct. 1502 (1988), this Court held that, unless he is represented by the Solicitor General or his designee, a district court judge is without authority to file, on his own behalf, a petition with this Court seeking review of a judgment of the Court of Appeals that reversed that district court judge's imposition of sanctions. Further, in *Federal Election Commission v. NRA Political Victory Fund*, 513 U.S. 88, 115 S. Ct. 537 (1994), this Court held that the Solicitor General may not ratify an unauthorized filing of a petition in this Court in a case in which the United States is interested, unless the Solicitor General authorized that filing within the 90-day time period for filing a petition. *Id.*, 513 U.S. at 98, 115 S. Ct. at 543. In this case, Judge Scott is not represented by the Solicitor General or his designee, but is instead represented by privately appointed counsel (who is also counsel for the plaintiffs in the underlying civil action). Further, by correspondence dated April 14, 1999, the Solicitor General advised Judge Scott's counsel that Judge Scott "neither sought or received" timely authorization from the Solicitor General to file a petition in this Court.[3]

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2. The Attorney General has delegated authority to the Solicitor General to conduct, or assign and supervise, "all Supreme Court cases, including appeals, petitions for and in opposition to certiorari, briefs and arguments, and . . . settlement thereof." 28 C.F.R. § 0.20 (1987).

3. The Solicitor General sent a copy of his correspondence to the Clerk of this Court.

Applying the law as expressed by this Court and by Congress to the facts of this case, it is clear that Judge Scott is without authority to file this petition on his own behalf and represented by appointed private counsel not authorized by the Solicitor General. Accordingly, Judge Scott's petition must be denied.

CONCLUSION

Judge Scott was not a party to the proceedings in the Fifth Circuit, and in any event he is without authority to file a petition on his own behalf in this Court. Accordingly, his petition should not be considered.

Respectfully submitted,

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